05-197 AUG 8 - 2005

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No. 05-

In The

Supreme Court of the United States

John Lavell Williams,

Petitioner,

v.

State of Michigan,

Respondent.

On Petition for a Writ of Certiorari
To the Michigan Supreme Court

PETITION FOR A WRIT OF CERTIORARI

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August 3, 2005

QUESTION PRESENTED

Whether reasonable suspicion of criminal activity is required before a police officer may extend a traffic stop beyond the scope of the initial stop, in order to detain the driver for further questioning unrelated to the reasons for the initial stop.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner John Lavell Williams respectfully petitions for a writ of certiorari to review the judgment of the Michigan Supreme Court in this case.

OPINIONS BELOW

The opinions of the Cheboygan County Circuit Court and of the Michigan Court of Appeals are unpublished. The Michigan Supreme Court issued an opinion on May 11, 2005, which is reported, *People v Williams*, 696 N.W.2d 636 (Mich. 2005).

JURISDICTION

This Court has jurisdiction pursuant to 28 U.S.C. § 1257(a). The Michigan Supreme Court entered final judgment on May 11, 2005. Petitioner files this timely petition for a writ of certiorari, claiming that his rights under the United States Constitution have been violated.

CONSTITUTIONAL PROVISION INVOLVED

The Fourth Amendment to the Constitution of the United States provides as follows:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized. [U.S. Const. amend. IV.]

STATEMENT OF THE CASE

Overview

Petitioner was pulled over by the police for speeding. When asked his destination, he responded that he was going to Cheboygan, Michigan, and that he would be staying at the Holiday Inn. The police officer, based on the fact that there is no Holiday Inn in Cheboygan, ordered Petitioner out of the car to detain him for further questioning unrelated to the reasons for the initial stop. The officer admitted that he lacked a particularized suspicion, but claimed that he was "suspicious that something wasn't quite right." During the

continued detention and questioning, a search of Petitioner's car revealed cocaine and marijuana.

Although the trial court refused to suppress the evidence seized from Petitioner's car, the Michigan Court of Appeals reversed, holding that there was no reasonable suspicion to extend the scope of the initial traffic stop in order to investigate unrelated matters.

The State of Michigan applied for leave to appeal to the Michigan Supreme Court, arguing that a split of authority existed in the United States Circuit Courts of Appeals regarding the proper scope of questioning during a traffic stop, and that the Michigan Supreme Court should adopt the position that questions unrelated to the reasons for the traffic stop are permissible.

The Michigan Supreme Court, without conducting oral argument, issued an opinion reversing the Michigan Court of Appeals. The Michigan Supreme Court, relying almost exclusively on federal Circuit Court precedents, held that when conducting a traffic stop, the police officer may

ask questions about the circumstances leading to the stop, as well as any follow-up questions "when the initial answers given are suspicious." The Court did not require a showing of "reasonable suspicion," as that term has been delineated by case law. Petitioner now seeks a writ of certiorari to review that decision.

Factual Setting

On February 14, 2003, Trooper Jason Varoni of the Michigan State Police was in the median of interstate 75 in Cheboygan County, Michigan, observing northbound traffic and checking speed with radar. (*People v Williams*, Cheboygan County Docket No. 02-6898-FH ["trial record"], Transcript of preliminary examination, 2/26/03 [which was admitted into evidence at Petitioner's bench trial] ["P/E"], page 5). Shortly after 4 o'clock in the afternoon, he saw a blue Chevy sedan traveling faster than the posted limit of 70 miles per hour. (P/E, p 6). The officer then made a traffic stop for the speeding violation. *Id.*

When stopped, Petitioner gave the officer a valid driver's license, registration, and proof of insurance. (P/E, p 33). The officer testified that these pieces of information were all that he needed in order to complete the traffic stop—a civil infraction under Michigan law—and determine whether to issue a ticket or simply give the driver a warning. (P/E, pp 6, 34). Nonetheless, the officer questioned Petitioner about his destination, although the officer admitted that this question was not relevant to the speed of the car, which was the purpose for the traffic stop. (P/E, pp 6, 34-35).

Petitioner told the officer that he was going to the City of Cheboygan to visit some friends and that he would be staying at the Holiday Inn. (P/E, p 6). The officer became suspicious because there is no Holiday Inn in Cheboygan, although there is one in nearby Mackinaw City. (P/E, pp 6, 35, 38). The officer admitted that because there was a nearby Holiday Inn, Petitioner could have simply been mistaken about the location of the hotel. (P/E, pp 35, 38).

Nonetheless, based on Petitioner's statement about staying at the Holiday Inn, the officer ordered Petitioner out of the car for further questioning. (P/E, p 7). The officer's testimony, as reflected in the following excerpt, demonstrated that the basis for further detaining Petitioner was a mere hunch predicated on the statement about the Holiday Inn:

Q. And the fact that someone misstates where they're staying um, you're saying that made you suspicious of him, is that right?

A. Uh, you—you can call it what you want, I don't know about suspicious but yeah, it made me think twice about the statements he made.

Q. All right, so you weren't suspicious?

A. Yeah, I—I questioned his statements.

Q. Well, now when you're talking about suspicion you understand suspicion of something, right? Of some activity that's unlawful, right?

A. Yes, that could be.

Q. Well what was it about that response that you were suspicious of that was unlawful?

A. I wasn't suspicious of any particular thing that was unlawful.

Q. So it was unparticularized suspicion is that what you're saying?

A. Um, I guess that could be.

Q. Okay. Because you couldn't put your finger on what it was you were suspicious of, right?

A. I was suspicious that something wasn't quite right.

Q. But you did not know what it was, right?

A. That's right.

* * *

Q. All right, so we're back to this one sole statement as your basis of being somewhat suspicious of whatever you—you were thinking, right?

A. Right.

Q. And it's at that point that you then order him out of the car, right?

A. Yeah. Yes.

Q. And your purpose for continuing this investigation was based on this response from him, right?

A. Yes.

Q. Your purpose of the initial stop had seized [sic]; you weren't investigating speeding violation anymore were you?

A. No, no I wasn't.

Q. All right. That was over?

A. For the mo—yes.

Q. All right. And he was not free to go from this moment on, right?

A. That's correct. [P/E, pp 38-39, 40-41.]

When Petitioner complied with the officer's demand to step from the car, he was asked further questions. The officer then asked Petitioner details about his travel plans, the location of his luggage, whether he had ever been in trouble before, and whether he had ever been arrested for narcotics offenses before. (P/E, pp 7-9). Petitioner's two passengers were then questioned, as well. (P/E, pp 9-11).

The officer then requested a consent search of Petitioner's car, but did not inform Petitioner that a canine unit would assist with that search. (P/E, pp 12, 43). Petitioner complied, and a canine unit arrived to conduct a search of the car. (P/E, pp 12-14). The canine began scratching at the rear seat of the interior of the car, prompting

the officer to tear out the back seat to investigate further. (P/E/, pp 16, 18, 92). The officer then obtained a search warrant for the trunk of the vehicle and secured a locksmith to open the trunk. (P/E, pp 20-21). About three and-a-half hours after the stop began, the trunk was opened, revealing cocaine and marijuana. (P/E, pp 20-21, 32).

Lower Court Proceedings

Petitioner was charged with offenses under Michigan law involving possession of cocaine and marijuana with intent to deliver.[1] The Cheboygan County Circuit Court denied Petitioner's motion to suppress the evidence seized from the trunk of the car. (See Trial Record, Opinion and Order, 4/29/03, and Opinion and Order, 5/8/03, both of which are attached as part of the appendix to this Petition). The County Circuit Court held that Petitioner's statement about staying at the Holiday Inn, when there was no such hotel in

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[1] The other occupants of the car were also charged with narcotics offenses. One occupant pleaded guilty to lesser offenses, and the charges against the other occupant were dismissed at the Preliminary Examination. The instant Petition does not assert any claims on behalf of the other occupants of the car.

Cheboygan, constituted reasonable suspicion to justify the police officer's continued detention beyond the scope of the initial traffic stop. *Id.*

Petitioner appealed as a matter of right from his convictions and sentences after a bench trial. The Michigan Court of Appeals, in an unpublished per curiam opinion, reversed Petitioner's convictions, ruling that the police officer lacked the requisite reasonable suspicion required to extend a traffic stop to investigate matters beyond the scope of the initial traffic stop. (*People v Williams*, unpublished opinion per curiam of the Michigan Court of Appeals, issued August 5, 2004 [Docket No. 249853]; 2004 WL 1753139, a copy of which is included in the appendix to this Petition).

The State of Michigan sought discretionary review from the Michigan Supreme Court. In the State's application for leave to appeal, the State argued that the Michigan Supreme Court should recognize a split of authority among the U.S. Circuit Courts of Appeals regarding whether reasonable suspicion is required to extend a traffic stop to

question a driver about matters beyond the scope of the initial stop. The State argued that the Michigan Supreme Court should adopt the view of some Circuits, that any questions be permitted, even if unrelated to the reason for the traffic stop, provided that those questions are reasonable in scope and do not significantly increase the length of the detention. (See *People v Williams*, Michigan Supreme Court Case No. 127115; Application for Leave to Appeal, statement of questions presented).

The Michigan Supreme Court, without conducting oral argument on the matter, issued an opinion reversing the Court of Appeals. *People v Williams*, 696 N.W.2d 636 (Mich. 2005). The Michigan Supreme Court relied almost exclusively on cases from the U.S. Circuit Courts of Appeals. However, the Michigan Supreme Court did not indicate that a split of authority existed. Instead, the Michigan Supreme Court simply asserted, citing various federal cases, that during a traffic stop, a police officer may "ask reasonable questions in order to obtain additional information about the

underlying offense and the circumstances leading to its commission." *Id.*, 641. And the Court also held, "Implicit in the authority to ask these questions is the authority to ask follow-up questions when the initial answers given are suspicious." *Id.*

Therefore, the Michigan Supreme Court dispensed with the requirement that, in order to extend the scope of a traffic stop to investigate matters unrelated to the reasons for that stop, a police officer must possess a reasonable, articulable, and particularized suspicion, based on some objective manifestation of criminal activity. Justice Marilyn J. Kelly issued a dissenting opinion, insisting that the Court had "enlarge[d] the permissible scope of an inquiry by a police officer during a routine traffic stop." *Id.*, 643-644 (Kelly, J., dissenting).

Petitioner now seeks a writ of certiorari from the judgment of the Michigan Supreme Court.

REASONS FOR GRANTING THE WRIT

Certiorari would be warranted in this case, for the reason that a split of authority exists among the federal circuits regarding the proper scope of questioning by a police officer during a routine traffic stop. Additionally, the Michigan Supreme Court's ruling allows police officers to extend a traffic stop, even where the officer acknowledges that the purpose for that stop is completed, to question a motorist further when the motorist's answers to initial questions are "suspicious." The Michigan Supreme Court did not require a showing of "reasonable suspicion," and indeed, the officer in this case lacked any articulable, particularized suspicion. As a result, Petitioner's rights under the Fourth Amendment were violated. This Court's review is needed in order to clearly delineate the proper scope of questioning during a routine traffic stop, in order to avoid such constitutional violations as occurred in this case.

The Circuits are Split regarding Scope of Proper Questions

In the State of Michigan's application for leave to appeal to the Michigan Supreme Court, it asserted that the Michigan Supreme Court should review the case due to a split of authority among the federal circuits, and change the Michigan approach to one more consistent with that taken by the Seventh Circuit and others. The Michigan Supreme Court relied almost exclusively on federal cases in its opinion, in which it adopted an approach allowing a broad scope of questioning during a traffic stop.

The circuits are divided concerning the proper scope of questions during a routine traffic stop. For example, the Eleventh Circuit, in *United States v Boyce*, 351 F.3d 1102, 1103-1104 (11th Cir. 2003), held that controlled substances seized from the defendant's car must be suppressed where there was no reasonable suspicion to extend a traffic stop beyond the time needed to process the initial traffic violation. The court held that a traffic stop "may not last any longer than necessary to process the traffic violation unless there is

articulable suspicion of other illegal activity." *Id.*, 1106. However, the court recognized a conflict among the circuits regarding whether questions asked during a traffic stop must be limited to those justified by reasonable suspicion or reasonable safety concerns (a test required by the Tenth Circuit), or whether questions unrelated to the reasons for the initial stop are permissible as long as the duration of the stop is not prolonged (an approach taken in the Fifth Circuit). *Id.*, 1111. The Court did not need to reach the issue in that case, however, because the police officer's questions did extend the duration of the stop without reasonable suspicion, thereby requiring suppression under either approach. *Id.*

The Sixth Circuit has also recognized this conflict. In *United States v Garrido-Santana*, 360 F.3d 565, 574 (6th Cir. 2004), the court made the following observation:

> The circuit courts generally agree that the Fourth Amendment requires that, absent additional justification, any questioning during a valid traffic stop must not prolong the detention necessary to complete the initial purpose of that stop; however, there is some disagreement as to whether the Fourth Amendment also requires that, absent additional

> justification, such questioning must be reasonably related in subject matter to the purpose of the initial traffic stop.

The Sixth Circuit did not reach the issue, but recognized that it was "an important legal issue." *Id.*, 575. The court noted that the Fifth Circuit and Seventh Circuits did not limit the scope of questioning to those related to the purpose of the initial stop (citing *United States v Shabazz*, 992 F.2d 431, 436-437 (5th Cir. 1993) and *United States v Childs*, 277 F.3d 947, 949 (7th Cir. 2002)), while the Ninth and Tenth Circuits required that the officer's questions be reasonably related in scope to the purpose for the initial stop (citing *United States v Murillo*, 255 F.3d 1169, 1174 (9th Cir. 2001) and *United States v Holt*, 264 F.3d 1215, 1228-1231 (10th Cir. 2001)). See also *United States v Guerrero*, 374 F.3d 584, 589 (8th Cir. 2004) (holding that a police officer must have reasonable suspicion in order to extend the scope of a traffic stop beyond its initial purpose).

This Court has recognized that "a seizure that is lawful at its inception can violate the Fourth Amendment if its manner of execution unreasonably infringes interests protected by the Constitution." *Illinois v Caballes*, ___ US ___, 125 S. Ct. 834, 837, 160 L.Ed.2d 842 (2005). In this case, although the initial traffic stop for speeding was lawful, the police officer impermissibly extended the scope of his questions beyond the speeding violation.

When the officer asked Petitioner's destination and Petitioner stated that he was going to Cheboygan and would be staying at the Holiday Inn, the officer ordered Petitioner out of the car for further questioning unrelated to the speeding violation. The officer then questioned Petitioner about, among other things, whether he had a criminal history, or whether he had ever been in trouble for narcotics. The officer admitted that the purpose for the speeding stop had ceased, and that he was now investigating a different matter. Thus, the officer's questions and continued detention of Petitioner impermissibly extended the traffic stop, without

any reasonable suspicion for doing so. This Court's review is warranted, in order to clarify the proper scope of questioning during a traffic stop and resolve a split of authority among the federal circuits.

The Michigan Supreme Court dispensed with a requirement of Reasonable Suspicion to extend the Stop

Certiorari is also warranted due to the Michigan Supreme Court's expansion of police authority to detain a motorist without reasonable suspicion.

The Michigan Supreme Court held that an officer may ask questions "about the underlying offense and the circumstances leading to its commission." *People v Williams*, 696 N.W.2d 636, 641 (Mich. 2005). The Court then went even further, holding as follows: "Implicit in the authority to ask these questions is the authority to ask follow-up questions when the initial answers given are suspicious." *Id.*

The trial court and the Michigan Court of Appeals decided this case based on a determination whether the police

officer possessed the requisite *reasonable* suspicion to extend the scope of the traffic stop, as the term "reasonable suspicion" has been delineated through case law. However, the Michigan Supreme Court dispensed with that requirement entirely, allowing the stop to be extended whenever the motorist's answers are "suspicious." Notably absent from that ruling is the word "reasonable." Indeed, the Michigan Supreme Court noted its belief that "[i]t is unnecessary to consider whether Trooper Varoni had an independent, reasonable, and articulable suspicion that defendant was involved with narcotics." *Id.*, 642.

Thus, the Michigan Supreme Court allowed the officer to extend the scope of the initial stop based on any level of suspicion at all. It is axiomatic that reasonable suspicion, although a low threshold, requires something more than in inchoate suspicion or "hunch." Yet in this case, the officer possessed only such a hunch. The officer, by his own testimony, could not "put his finger" on anything, but had an "unparticularized" feeling that "something wasn't quite

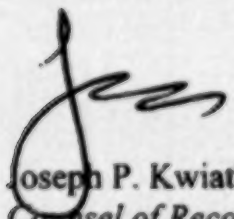
right." This was based solely on Petitioner's statement that he would be staying at the Holiday Inn, coupled with the officer's knowledge that there was no Holiday Inn in Cheboygan, although there was on in a nearby town.

The Michigan Court of Appeals correctly concluded that this did not amount to reasonable suspicion to justify the extension of the traffic stop to question Petitioner about matters unrelated to that stop. The Michigan Supreme Court did not reject that conclusion, but instead held that a showing of reasonable suspicion was not even required. This was a serious constitutional error that warrants issuance of the writ of certiorari.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted



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August 3, 2005

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John Lavell Williams,

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v.

State of Michigan,

Respondent.

On Petition for a Writ of Certiorari
To the Michigan Supreme Court

PETITIONER'S APPENDIX TO PETITION FOR A WRIT OF CERTIORARI

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August 3, 2005

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF CHEBOYGAN

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff,

v File No. 03-2709 FH

JOHN LAVELL WILLIAMS,

Defendant.
_____/

OPINION AND ORDER

Defendant in the present case is charged in a two count information alleging that he possessed with intent to deliver 50 grams or more of a substance containing cocaine and also possessed with intent to deliver the controlled substance, marijuana. Defendant has now moved to suppress the evidence consisting of these controlled substances seized from his automobile asserting that the search and seizure was predicated upon an illegal detention.

The parties have stipulated that this Court should consider as a factual basis for this motion the transcript of the preliminary examination conducted in this matter on February 26, 2003. That transcript reveals that the Defendant's automobile was stopped on February 14, 2003, at approximately 4:16 p.m. when it was clocked at 88 miles per hour.

The State Trooper testified that upon approaching the Defendant who was driving the automobile, that he requested the standard paper work form the Defendant and also

inquired as to where the Defendant was going. The Defendant advised the Trooper that he was going to Cheboygan to visit friends for a couple of days and would be staying in the Holiday Inn. Knowing that there is no Holiday Inn located in Cheboygan, Michigan, the Trooper found this suspicious. The Trooper also testified that he found the fact that there were three adults in the car and there was no luggage visible on the inside of the vehicle suspicious as well.

In any event, based upon his suspicions, the Trooper wished to discuss the matter further with the Defendant and asked him to exit the vehicle which the Defendant did. It appears that the officer then spent approximately a few minutes with this Defendant outside of the vehicle and at that time the Defendant advised the trooper that he would be spending approximately two days at the Holiday Inn. He also advised the Trooper that there was no luggage because he had no clothing with him other than what he was wearing. The Defendant, disclosed that he had a prior narcotics arrest history involving marijuana.

After this questioning, the Trooper then asked the front seat passenger, Mr. King, to exit the vehicle. The Trooper then briefly questioned Mr. King who advised him that he was unaware as to where he was going or how long the trip was to be.

The Trooper then spoke with the Defendant's wife, Mrs. Williams, who was seated in the back seat. She advised the Trooper that they were going to Cheboygan to do some shopping and then shop at strip malls on their return to the Detroit area. Mrs. Williams was unaware of where they would be staying. As each minute of the stop went by, the Trooper heard additional inconsistencies which reasonably added to his suspicions.

The Trooper then spoke with the Defendant and advised the Defendant of his perception that there were many inconsistencies and conflicts between the stories given by the three adults present. The Trooper then asked for Mr. Williams' consent to search the vehicle which was given.

The above scenario, from the time of the stop until the consent to search was given, lasted approximately five to eight minutes. The Defendant correctly asserts that this five to eight minute delay was not for purposes of writing a traffic violation which was the reason for the initial stop but instead was the result of police officer's questioning based upon his suspicion that criminal activity may be underfoot.

The Court would find that based upon the facts and circumstances presented in the preliminary examination transcript, this was not an illegal detention of the Defendant.

The statements concerning staying at the Holiday Inn coupled with the other statements of this Defendant and the other occupants of the car raised reasonable suspicion in the mind of the Trooper. The lack of luggage in the car does not support any reasonable suspicion but in light of all the other facts, this is not controlling. It could reasonably be concluded that there was a good possibility that these individuals were being dishonest with the Trooper. It would justify the Trooper's suspicion that some type of illegal action was occurring.

> "In People v. Christie (On Remand), 206 Mich App 304, 308; 520 NW2d 647 (1994), this court explained the standard applicable to a police officer's investigative stop of a criminal suspect:
>
> > It is well established at brief investigative stops short of arrest are permitted where police officers have a reasonable suspicion of on going criminal

activity. Terry v. Ohio, 392 US 1, 16; 88 S Ct 1868; 20 L Ed 2d 889 (1968); People v. Faucett, 442 Mich 153, 168; 499 NW 2d 764 (1993). The totality of the circumstances test is to be used in cases involving investigative stops. Id, citing US v. Cortez, 449 US 411; 10-1 S Ct 690; 66 L Ed 2d 621 (1981). The Cortez court warned against overly technical reviews of a police officer's common-sense assessment of the probability that criminal activity is underfoot. Faucett, supra at 168.

In determining whether the police officer's suspicion for making the investigative stop was reasonable, '(C) ommon sense and everyday life experiences predominate over uncompromising standards' Nelson, supra at 635-636. Deference should be given to the police officer's experience and the known patterns of certain types of lawbreakers. Id. At 636. In , supra at 635-636. Deference should be given to the police officer's experience and the known patterns of certain types of lawbreakers. Id. At 636. In People v. Champion, 452 Mich 92, 98; 549 NW 2d 849 (1996), our Supreme Court further explained the reasonable suspicion required in order to justify a Terry investigative stop: 'Reasonable suspicion entails something more than an inchoate or unparticularized suspicion of "hunch", but less than the level of suspicion required for probable cause.'

If an investigative stop of an automobile is proper, the officer is 'permitted to briefly detain the vehicle and make reasonable inquiries aimed at confirming or dispelling his suspicions.' People v. Yeoman, 218 MA 406, 411; 554 NW 2d 577 (1996), citing Nelson, supra at 637."

People v. Rizzo, 243 MA 151, 155, 156 (2000).

The delay in this case of less than of 10 minutes was not unreasonable under the facts presented.

NOW, THEREFORE, IT IS ORDERED that Defendant's motion to suppress is hereby denied.

Dated: 4-29-03

s/ Scott L. Pavlich

HONORABLE

SCOTT L. PAVLICH

53rd Circuit

Court

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF CHEBOYGAN

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff,

v File No. 03-2709 FH

JOHN LAVELL WILLIAMS,

Defendant.
_____/

OPINION AND ORDER

This Court has previously denied Defendant's Motion to Suppress Evidence based on search and seizure issues and Defendant has now moved for reconsideration of that Order. The Court is not persuaded that reconsideration is merited.

There is no dispute in the case at bar that after the Trooper made the initial traffic stop for the speeding infraction of driving 88 mph in a 70 mph zone, a second investigatory stop ensued. This second stop or detention occurred as a result of the Defendant stating to the Trooper that he would be going to Cheboygan and staying at a Holiday Inn when in fact there is no Holiday Inn in Cheboygan. The Trooper stated that this inaccuracy in Defendant's statement raised a suspicion in his mind that criminal activity may be afoot. The Trooper did not articulate a specific criminal act but this is not required. The misleading statement made by the Defendant was the particularized fact that the officer described as raising a suspicion in his mind. This created a reasonable basis for the Trooper to question the Defendant further.

Defendant's argument that the Court's earlier opinion looked to facts occurring after the initial stop to justify the stop is misplaced. The Court's opinion remains that over the 6 to 8 minutes of this second investigatory stop, more and more facts evolved that would strengthen the Trooper's suspicions generated by the initial misleading statement by the Defendant. The Court is of the opinion that it must review this matter and look at the totality of the circumstances and as the delay lengthened, more and more facts came to light which would support the Trooper's suspicions.

The Defendant further argues, in its Motion for Reconsideration, that this Court should consider testimony given in another case in another court by this Trooper. This would not be appropriate material to consider under this Motion for Reconsideration.

NOW, THEREFORE, IT IS ORDERED, for the reasons set forth above, Defendant's motion to reconsider is hereby denied.

Dated: 5-8-03

s/ Scott L. Pavlich

HONORABLE

SCOTT L. PAVLICH

53rd Circuit

Court

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

UNPUBLISHED
August 5, 2004
No. 249853
Cheboygan Circuit Court
LC No. 03-002709-FH

JOHN LAVELL WILLIAMS,

Defendant-Appellant.

Before: Bandstra, P.J., and Fitzgerald and Hoekstra, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of possession with intent to deliver between fifty and 224 grams of cocaine, MCL 333.7401(2)(a)(iii), and possession with intent to deliver marijuana, MCL 333.7401(2)(d)(iii). He was sentenced to consecutive prison terms of seven to twenty years and two to four years for his respective convictions. Defendant appeals as of right, arguing that the trial court erred by denying his motion to suppress evidence and by denying his motion to strike a prosecution witness. We reverse.

On February 14, 2003, defendant's vehicle was searched pursuant to consent and a search warrant after he was stopped for traveling at an extensive rate of speed on northbound I-75 in Cheboygan County. During the search, the troopers discovered cocaine and marijuana in the trunk of the vehicle. Before trial, defendant moved to suppress the

evidence, arguing that his detention following the traffic stop violated the Fourth Amendment of the United States Constitution and therefore resulted in an illegal seizure.

At the suppression hearing,[1] Michigan State Police Trooper Jason Varoni testified that he was positioned in the median on I-75 just south of M-68 when he observed an older blue Chevy four-door vehicle that appeared to be speeding. He activated the radar and clocked the vehicle at eighty-eight miles per hour. At approximately 4:20 p.m., the trooper pulled out and conducted a traffic stop of the vehicle, which contained three black occupants. Defendant, the driver of the vehicle, presented the necessary paperwork to the trooper and, in response to questioning by the trooper, indicated that he was going to Cheboygan to visit friends and that he was staying at the

[fn 1 The parties stipulated to the use of the transcript of the preliminary examination for deciding the motion to suppress.]

Holiday Inn. The trooper knew that there was not a Holiday Inn in Cheboygan and observed that there was no luggage in the passenger compartment that would indicate a stay. Before issuing a warning or a ticket, the trooper asked defendant to step out of the vehicle. Defendant identified his backseat passenger as his wife, Sherrie Williams, and his front seat passenger as Keithan King. In response to questioning, defendant stated that he was coming from Detroit and that he was going to be staying in Cheboygan for "about two days." Defendant also stated that he did not have any luggage in the vehicle, "other than the clothes he was wearing." Defendant also stated that he had been arrested previously "for marijuana." At that point, defendant was asked to return to his vehicle, and the trooper questioned King.

King indicated that he did not know where he was going and did not know how long he was going to be gone. King stated that he did not have any baggage or clothing with him for the trip. King returned to the vehicle and Trooper Varoni spoke with Sherrie Williams through the back window of the vehicle. Sherrie indicated that she was going to Cheboygan to go shopping and that they were going to stop and shop at strip malls on the way back to Detroit. She indicated that she did not know where they would be staying and that they did not have any reservations. The conversations took a total of approximately five to eight minutes.

Trooper Varoni then advised defendant of the different stories between the three occupants and asked defendant if he would consent to a search of the car. Defendant consented, and a canine unit arrived at the scene in approximately three minutes. The dog had a positive alert in the backseat where Sherrie Williams had been seated, in the area where the seat and the backrest come together.

After the dog alerted, Trooper Varoni asked defendant if he had a key to the trunk. Defendant answered that he did not carry a key and, ultimately, a search warrant was obtained at approximately 7:30 p.m. During the search of the trunk the troopers found a Best Western laundry bag behind a speaker box. The bag contained a large zip lock baggie containing suspected marijuana and a sandwich baggie contained suspected cocaine. Defendant was arrested on suspicion on possession with intent to deliver cocaine and marijuana.

Defendant moved to suppress the evidence, arguing that the search and seizure was predicated upon an illegal detention. He asserted that the trooper did not have a reasonable suspicion to detain defendant after the initial

traffic stop was concluded or to ask defendant to step out of the vehicle. The trial court denied the motion, finding that:

> The statements concerning staying at the Holiday Inn coupled with the other statements of this Defendant and the other occupants of the car raised reasonable suspicion in the mind of the Trooper. The lack of luggage in the car soes [sic] not support any reasonable suspicion but in light of all the other facts this is not controlling. It could reasonably be concluded that there was a good possibility that these individuals were being dishonest with the Trooper. It could justify the Trooper's suspicion that some type of illegal action was occurring.

I

This Court's review of a lower court's factual findings in a suppression hearing is limited to clear error and those findings will be affirmed unless we are left with a definite and firm conviction that a mistake was made. *People v Davis,* 250 Mich App 357, 362; 649 NW2d 94 (2002). However, the lower court's ultimate ruling with regard to the motion to suppress is reviewed de novo because the application of constitutional standards regarding searches and seizures to undisputed facts is entitled to less deference. *People v Oliver,* 464 Mich 184, 191; 627 NW2d 297 (2001).

II

Both the United States and Michigan Constitutions guarantee the right against unreasonable searches and seizures. US Const, Am IV; Const 1963, art 1, § 11. The state and federal constitutions do not forbid all searches and seizures, only unreasonable ones. *Harris v United States,* 331 US 145, 150; 67 S Ct 1098; 91 L Ed 1399 (1947); People *v Jordan,* 187 Mich App 582, 586; 468 NW2d 294 (1991).

Whenever a police officer restrains a person's freedom, the person has been seized for purposes of the Fourth Amendment. However, not all seizures must be based on probable cause. A limited exception to the requirement of probable cause involving seizure of a person is where the officer has a "reasonable, articulable suspicion" that the person has committed or is about to commit a crime. *Terry v Ohio*, 392 US 1; 88 S Ct 1868; 20 L Ed 2d 889 (1968). A reasonable, articulable suspicion of criminal activity will support a brief investigative seizure of the person. However, an investigative detention must be temporary and last no longer than is necessary to effectuate the purpose of the stop. *Florida v Royer*, 460 US 491, 500; 103 S Ct 1319; 75 L Ed 2d 229 (1983) (plurality opinion); *United States v Richardson*, 949 F 2d 851, 857 (CA 6, 1991).

There is no dispute that the initial traffic stop was lawful. Defendant argues that the purpose of the stop was effectuated when defendant supplied the necessary paperwork. He contends that the trooper unlawfully exceeded the initial stop when he asked defendant to step out of the vehicle because the trooper had "only a generalized hunch" that criminal activity was afoot. We agree.

A review of the record reveals that the trooper commenced an investigatory stop when he asked defendant to step out of his vehicle so that the trooper could question defendant about whether defendant "had bags in his truck or where they were at," whether "he had been in trouble before," and whether "he'd been arrested for anything to do with drugs." These questions had no relevance to the traffic stop and were asked in order to determine whether defendant was involved in criminal activity. At the time the investigatory stop commenced, the trooper was acting on the basis that defendant told the trooper that he was staying at a Holiday Inn "in Cheboygan" when the Holiday Inn closest to

Cheboygan is apparently twenty miles north in Mackinaw City, and the trooper's observation that defendant and his passengers had no luggage in the passenger compartment of the vehicle. This information does not constitute reasonable suspicion of criminal activity. Although defendant's statement that he and his companions were staying at a Holiday Inn "in Cheboygan" could have been a lie, it is equally plausible that defendant simply misspoke. Regardless, whether the statement was a lie or not was unsubstantiated at the time the trooper commenced the investigatory stop, and it alone does not rise to the level of constituting a reasonable, articulable suspicion of criminal activity. Further, the trooper's observation that the passenger compartment contained no luggage is of no particular significance, and certainly is not suggestive of criminal activity. Rather, on these facts, it is apparent that the trooper was acting on a "hunch," which is insufficient grounds for pursuing an investigatory stop. *People v Champion*, 452 Mich 92, 98; 549 NW2d 849 (1996).[2]

Reversed.
/s/ Richard A. Bandstra
/s/ E. Thomas Fitzgerald
/s/ Joel P. Hoekstra

[fn 2 In light of our conclusion, we need not address defendant's argument that the trial court erred by denying defendant's motion to strike fingerprint analyst Thomas Holcomb because Holcomb was not identified by name on the witness list in violation of MCL 767.40a(4) and MCL 767.40a(3). We note, however, that defendant's argument is without merit.]

Michigan Supreme Court
Lansing, Michigan

OPINION	Chief Justice:	Justices:
	Clifford W. Taylor	Michael F. Cavanagh
		Elizabeth A. Weaver
		Marilyn Kelly
		Maura D. Corrigan
		Robert P. Young, Jr.
		Stephen J. Markman

FILED MAY 11, 2005

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v No. 127115

JOHN LAVELL WILLIAMS,

Defendant-Appellee.

PER CURIAM

This case concerns the constitutionality of a traffic stop. After stopping defendant's vehicle for speeding, a state trooper asked defendant routine questions about his travel plans and obtained his consent to search the vehicle. Cocaine and marijuana were discovered during the search. Defendant argues, and the Court of Appeals determined, that his consent was invalid because his detention exceeded the proper scope of a traffic stop, in violation of the Fourth Amendment. The

Court of Appeals held that the trial court should have suppressed the fruits of the search. [1]

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[1] Unpublished opinion per curiam, issued August 5, 2004 (Docket No. 249853).

We conclude that the detention was reasonable and did not exceed the proper scope of a traffic stop. Because defendant's Fourth Amendment rights were not violated as a result of the detention, his consent was valid. We reverse the judgment of the Court of Appeals and remand this case to the trial court for reinstatement of defendant's convictions and sentences.

I. BACKGROUND

On February 14, 2003, Michigan State Police Trooper Jason Varoni observed defendant's vehicle traveling eighty-eight miles an hour on I-75 in Cheboygan County, where the posted speed limit was seventy miles an hour. He stopped defendant's vehicle. Upon request, defendant produced his driver's license. Trooper Varoni told defendant why he had been stopped and asked defendant where he was going. Defendant answered that he was going to Cheboygan to visit friends and that he was staying at the Holiday Inn.

Because Cheboygan does not have a Holiday Inn, Trooper Varoni was suspicious of this response and asked defendant to step from the vehicle to answer additional questions. Defendant did so and, in response to further questioning, explained that he was coming from Detroit and that he intended to stay in Cheboygan for two days. No luggage was visible in the vehicle's passenger compartment; when asked about this, defendant said that he brought no luggage on the trip. Trooper Varoni asked defendant if he had

"been in trouble before," and defendant disclosed that he had previously been arrested for a marijuana-related offense.

Trooper Varoni then questioned the vehicle's other two occupants about their own travel plans, but their inconsistent responses only increased his suspicions. [2] This questioning was completed about five to eight minutes after the traffic stop occurred. Trooper Varoni then informed defendant that he had received conflicting stories from the occupants of the vehicle. He asked for defendant's consent to search the vehicle, and defendant agreed.

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[2] The front-seat passenger claimed that he did not know where they were going or how long they would be gone; he confirmed that he had no luggage. The backseat passenger, defendant's wife, told Trooper Varoni that they were going shopping in Cheboygan and then Detroit. She said that they had made no arrangements for accommodations.

Trooper Varoni contacted the Tuscarora Township canine unit, and asked that a drug-detection dog be sent to the scene. The canine unit arrived within three minutes and the dog signaled the presence of narcotics in the backseat of the vehicle. Trooper Varoni did not find any narcotics in that area, and he asked defendant for consent to search the vehicle's trunk. Defendant initially agreed, but then withdrew his consent. A warrant was obtained, and the police discovered substances that appeared to be marijuana and cocaine. [3] Trooper Varoni wrote defendant a citation for speeding and two drug-related felonies, and arrested him.

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[3] This was confirmed through later testing.

Defendant was charged with possession with intent to deliver fifty grams or more but less than 225 grams of a substance

containing cocaine, MCL 333.7401(2)(a)(iii), and possession with intent to deliver marijuana, MCL 333.7401(2)(d)(iii). He moved to suppress evidence of the controlled substances seized from his vehicle, asserting that the search [4] and seizure were predicated on an illegal detention. The trial court denied the motion. It concluded that the statements made by the occupants of the vehicle raised reasonable suspicions in Trooper Varoni's mind. It further concluded that the delay caused by the additional questioning was not unreasonable under the circumstances presented.

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[4] Defendant disputes the validity of the initial search of the car; he does not separately challenge the validity of the later search of the trunk, which was conducted after Trooper Varoni obtained a search warrant and which led to the discovery of the controlled substances.

Defendant was convicted as charged following a bench trial, and was sentenced to consecutive prison terms of seven to twenty years (for the cocaine conviction) and two to four years (for the marijuana conviction).

Defendant appealed, challenging the trial court's denial of his motion to suppress, and the Court of Appeals reversed. Concluding that the initial traffic stop had been lawful, the Court then determined that the trooper "unlawfully exceeded the initial stop when he asked defendant to step out of the vehicle" to answer questions about his travel plans while the officer possessed only a "generalized hunch" that criminal activity was afoot. The trooper's questions had no relevance to the traffic stop, the Court held, and he had no reasonable suspicion of criminal activity to warrant asking the questions. The Court concluded that Trooper Varoni was acting on a "hunch," which is insufficient grounds for pursuing an investigatory stop. For

these reasons, it reversed the trial court's ruling on the motion to suppress.

The prosecutor applied to this Court for leave to appeal.

II. STANDARD OF REVIEW

This Court reviews a trial court's findings at a suppression hearing for clear error. *People v Jenkins*, 472 Mich 26, 31; 691 NW2d 759 (2005); *People v Custer*, 465 Mich 319, 325-326; 630 NW2d 870 (2001). But the application of constitutional standards regarding searches and seizures to essentially uncontested facts is entitled to less deference; for this reason, we review de novo the trial court's ultimate ruling on the motion to suppress. *Jenkins*, *supra*; *People v Oliver*, 464 Mich 184, 191-192; 627 NW2d 297 (2001).

III. ANALYSIS

We review here the Court of Appeals determination that the traffic stop escalated into an illegal detention in violation of the Fourth Amendment, rendering defendant's eventual consent to search a nullity. The Fourth Amendment of the United States Constitution provides:

> The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized. [5]

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[5] US Const, Am IV.

In assessing the protections created by this amendment, the United States Supreme Court has "long held that the 'touchstone of the Fourth Amendment is reasonableness.'" *Ohio v Robinette*, 519 US 33, 39; 117 S Ct 417; 136 L Ed 2d 347 (1996) (citation omitted). Reasonableness is measured by examining the totality of the circumstances. *Id.* Because of "'endless variations in the facts and circumstances'" implicating the Fourth Amendment, reasonableness is a fact-intensive inquiry that does not lend itself to resolution through the application of bright-line rules. *Id.*, quoting *Florida v Royer*, 460 US 491, 506; 103 S Ct 1319; 75 L Ed 2d 229 (1983).

In analyzing the propriety of the detention here, we apply the standard set forth in *Terry v Ohio*, 392 US 1; 88 S Ct 1868; 20 L Ed 2d 889 (1968). [6] Under *Terry*, the reasonableness of a search or seizure depends on "whether the officer's action was justified at its inception, and whether it was reasonably related in scope to the

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[6] *Knowles v Iowa*, 525 US 113, 117; 119 S Ct 484; 142 L Ed 2d 492 (1998) (despite existence of probable cause, a common traffic stop is more analogous to limited detention authorized by *Terry* than to an arrest) (quoting *Berkemer v McCarty*, 468 US 420, 439-440; 104 S Ct 3138; 82 L Ed 2d 317 [1984]).

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circumstances which justified the interference in the first place." [7] *Terry, supra* at 20.

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[7] The reviewing court considers the objective facts relating to the traffic stop; the officer's subjective state of mind is not relevant to the determination whether the detention was proper. *Oliver, supra* at 199.

In this case, there is no dispute that the initial traffic stop was occasioned by defendant's speeding, and was therefore based on probable cause and was reasonable. *Robinette*, *supra* at 38. Under *Terry*, the remaining question is whether the subsequent detention was "reasonably related in scope to the circumstances" of this case. *Terry, supra* at 20. We conclude that it was.

As a threshold matter, the Court of Appeals erred when it agreed with defendant that the purpose of this traffic stop was fully effectuated when defendant handed Trooper Varoni his driver's license and other requested paperwork. This view of the essential nature of the traffic stop imposes an unreasonable restriction on an officer's ability to investigate a violation of the law.

A traffic stop is reasonable as long as the driver is detained only for the purpose of allowing an officer to ask reasonable questions concerning the violation of law and its context for a reasonable period. [8] The determination whether a traffic stop is reasonable must necessarily take into account the evolving circumstances with which the officer is faced. As we observed in *People v Burrell*, 417 Mich 439, 453; 339 NW2d 403 (1983), when a traffic stop reveals a new set of circumstances, an officer is justified in extending the detention long enough to resolve the suspicion raised. [9]

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[8] There is considerable discretion allowed an officer charged with enforcing the traffic laws as a member of the executive branch of government. This discretion can be exercised effectively only if an officer is allowed to ask reasonable questions concerning the context of a traffic offense. To deny an officer the ability to ask reasonable questions, reasonably circumscribed in scope and duration, is to deny the officer the ability to reasonably exercise the officer's discretion.

[9] Put another way, when considering whether a detention is reasonably related in scope to the circumstances of the case, a reviewing court must consider whether "the officer's subsequent actions were fairly

responsive to the emerging tableau—the circumstances originally warranting the stop, informed by what occurred, and what the officer learned, as the stop progressed." *United States v Chhien*, 266 F3d 1, 6 (CA 1, 2001).

It is no violation of the Fourth Amendment for an officer to ask reasonable questions in order to obtain additional information about the underlying offense and the circumstances leading to its commission. For example, in addition to asking for the necessary identification and paperwork, an officer may also ask questions relating to the reason for the stop, including questions about the driver's destination and travel plans. *United States v Williams*, 271 F3d 1262, 1267 (CA 10, 2001). [10] Specifically, an officer may ask about the "purpose and itinerary of a driver's trip during the traffic stop" in order to determine whether a "violation has taken place, and if so, whether a citation or warning should be issued or an arrest made." *United States v Brigham*, 382 F3d 500, 508 (CA 5, 2004). Such inquiries are "within the scope of investigation attendant to the traffic stop." *Id.*

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[10] See also *United States v Givan*, 320 F3d 452, 459 (CA 3, 2003); *United States v Linkous*, 285 F3d 716, 719 (CA 8, 2002); *United States v Hill*, 195 F3d 258, 268 (CA 6, 1999); *United States v Johnson*, 58 F3d 356, 357 (CA 8, 1995).

Implicit in the authority to ask these questions is the authority to ask follow-up questions when the initial answers given are suspicious. [11] Likewise, there is no constitutional prohibition against asking similar questions of any passengers in the vehicle. [12].

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[11] *United States v Johnson*, 58 F3d 356, 357-358 (CA 8, 1995).

[12] *Linkous*, *supra* at 719 (an officer may question the occupants of a vehicle to verify information provided by the driver).

Simply put, the Fourth Amendment does not impose a "one size fits all" rule of police investigation, [13] much less one that restricts the officer to informing the driver of the nature of the infraction, and subsequently obtaining the information necessary to fill out a citation. The Fourth Amendment requires only that the detention be *reasonable*—that is, that it be reasonably restricted in light of all the facts available to the officer. See *Robinette*, *supra* at 39.

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[13] See *Robinette*, *supra* at 39 ("In applying this test we have consistently eschewed bright-line rules, instead emphasizing the fact-specific nature of the reasonableness inquiry.").

That standard was satisfied here. Trooper Varoni introduced himself to defendant, explained the purpose of the stop, and obtained the necessary identification and paperwork in order to complete the citation for the civil infraction of speeding. In response to a routine question about his travel plans, defendant provided Trooper Varoni with an explanation that was implausible. [14] Therefore, even before Trooper Varoni could resolve the matter of defendant's violation of the traffic laws, he was presented with additional suspicious circumstances that warranted further investigation.

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[14] The Court of Appeals stated that there were "plausible" innocent explanations for the statements made by the vehicle occupants. But the fact that such explanations can be imagined does not mean that Trooper Varoni acted unreasonably in seeking to resolve the inconsistencies. See *Oliver*, *supra* at 204.

Trooper Varoni acted on these new suspicions by asking defendant additional questions about his travel plans and whether he had been in trouble before, and by briefly speaking with the vehicle's occupants. None of the answers provided by defendant or his companions allayed Trooper Varoni's suspicions. Moreover, the entire encounter took only five to eight minutes, at which time Trooper Varoni requested and obtained defendant's consent to search the vehicle.

After reviewing the facts and evaluating the totality of the circumstances, we conclude that the traffic stop here was reasonable in both scope and duration.

It follows that defendant was not being unlawfully detained when he was asked to consent to the search. Consent must be freely and voluntarily given in order to be valid. *People v Borchard-Ruhland*, 460 Mich 278, 294; 597 NW2d 1 (1999); *Royer*, *supra* at 497. An investigatory stop, as occurred in this case, is not so inherently coercive that it renders involuntary consent given during the stop. *Royer*, *supra* at 501, 502; *People v Acoff*, 220 Mich App 396, 400; 559 NW2d 103 (1996). There is no suggestion that defendant was coerced into giving his consent. [15]

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[15] Defendant's own actions show that he understood that he could refuse the request. He later declined to consent to a search of the trunk.

It is unnecessary to consider whether Trooper Varoni had an independent, reasonable, and articulable suspicion that defendant was involved with narcotics, or even whether the Fourth Amendment might impose such a requirement under different circumstances. [16] The detention and search here were reasonable because: (1) the initial traffic stop was lawful, (2) Trooper Varoni's questions about defendant's

travel plans, and his limited follow-up, were reasonable and did not exceed the proper scope and duration of the initial traffic stop, and (3) after Trooper Varoni concluded his questioning, defendant voluntarily consented to the search of the vehicle. All in all, rather than amounting to a constitutional violation, we find that

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[16] One aspect of an officer's ability to conduct a drug search without independent, articulable, and reasonable suspicion was addressed in *Illinois v Caballes*, 543 US ___; 125 S Ct 834; 160 L Ed 2d 842 (2005). Employing the reasonableness standard of *Robinette*, the United States Supreme Court held that, as long as the traffic stop is not prolonged, an officer may use a drug-detection dog to sniff a vehicle during the stop, even if the defendant does not consent and the officer lacks reasonable, articulable suspicion that the occupants of the vehicle are involved with narcotics.

Trooper Varoni's work in this case amounted to excellent police work. The trial court properly denied defendant's motion to suppress evidence of the controlled substances found during the search of his vehicle.

IV. CONCLUSION

Because the detention was reasonable and did not constitute a violation of defendant's Fourth Amendment rights, we reverse the judgment of the Court of Appeals and remand this case to the trial court for reinstatement of defendant's convictions and sentences. MCR 7.302(G)(1).

Clifford W. Taylor
Michael F. Cavanagh
Elizabeth A. Weaver
Maura D. Corrigan
Robert P. Young, Jr.
Stephen J. Markman

STATE OF MICHIGAN

SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v No. 127115

JOHN LAVELL WILLIAMS,

Defendant-Appellee.

KELLY, J. (*dissenting*).

I agree with the Court of Appeals that the trial court erred by denying defendant's motions to suppress and to strike the evidence provided by Trooper Jason Varoni. The trooper's questions of defendant were not reasonably related to the purpose of the traffic stop. Furthermore, defendant's statement to the trooper that he was staying at a Holiday Inn in Cheboygan could not evoke a reasonable suspicion that he was engaged in criminal activity. Therefore, I would affirm the decision of the Court of Appeals.

Terry v Ohio

Traffic stops are subject to the test established by the United States Supreme Court in *Terry v Ohio*, 392 US 1, 20; 88 S Ct 1868; 20 L Ed 2d 889 (1968). According to *Terry*, an officer's investigation of a traffic stop must be "reasonably related in scope to the circumstances which justified the interference in the first place." *Id.* A defendant may not be detained even momentarily without reasonable, objective

grounds for doing so. *Florida v Royer*, 460 US 491, 498; 103 S Ct 1319; 75 L Ed 2d 229 (1983). The scope of the detention must be carefully tailored to the justification for the stop. *Id.* at 500.

Considering the totality of the circumstances, I would find that the officer's questioning in this case exceeded the permissible legal scope of inquiry regarding a speeding offense. It was not reasonably related to defendant's violation of the speed limit. Furthermore, I believe that the answers to the officer's questions did not give rise to an articulable suspicion that criminal activity was afoot.

Scope of the Stop

Trooper Varoni detained defendant for driving in excess of the speed limit. An additional reason for the stop was that his vehicle had a cracked windshield. There was no reasonable articulable suspicion of any other offense.

Neither the United States Supreme Court nor the Michigan Supreme Court has ever ruled that questioning beyond the scope of a traffic stop is allowed. The Court of Appeals decision in this case accurately reflects Michigan law. However, with this decision, the Court changes Michigan law to enlarge the permissible scope of an inquiry by a police officer during a routine traffic stop.

Permissible Questioning

The questions "Why the rush?" and "Where are you headed in such a hurry?" from a police officer may be reasonably related to a traffic stop for speeding. They seek an admission of speeding.

But questions about a driver's destination, purpose, length of stay, and with whom he will be staying are meant to

inquire into issues beyond a speeding offense. Not only have they nothing to do with a speeding offense, they are not helpful to a police officer's decision to release the driver or to issue a citation or warning. [1] *Ante* at 10.

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[1] The majority cites several federal circuit court of appeals cases for the proposition that questions about travel plans are reasonably related to the scope of a traffic stop. We are not bound by these decisions, and, as noted above, I find their logic defective.

On direct examination, Trooper Varoni testified that he asked defendant where he was going and that defendant offered that "he was going into Cheboygan to visit friends and that he was staying at the Holiday Inn." However, it is apparent from the cross-examination of Trooper Varoni that defendant did not volunteer this information to the trooper in response to a general question. Instead, as Trooper Varoni admitted:

> *A.* Uh, it's—it's my practice to ask more than just for those three pieces of uh, documentation [referring to license, registration, and insurance paperwork].
>
> * * *
>
> *Q.* All right. And then you proceeded to further this investigation by questioning Mr. Williams as to um, issues of where he was going and what he was going to do when he was there, is that correct?
>
> *A.* Yes.
>
> *Q.* And these questions weren't relevant to how fast he was going, were they?

A. I-I ask everybody I stop where they're going to and where they are coming from.

* * *

Q. My question was; the question about where he's going and how long he is staying is not relevant to how fast he's going and the purpose for your stop; is it?

A. That's correct.

Without question, the trooper asked defendant questions that exceeded the scope of legal inquiry regarding a speeding offense. The trooper evoked an answer regarding the location where defendant was planning to spend the night. He also asked defendant if defendant had any prior narcotics convictions. Trooper Varoni testified:

> Um, I asked him if he had been in trouble before and uh, he told me that he had. I asked if it had any—you know, related narcotics [sic], if he'd ever been arrested for anything to do with drugs and he told me that he had. I asked him for what and he said marijuana.

This question likewise was unrelated to the purpose of the traffic stop. Once defendant stated that he was staying at a Holiday Inn in Cheboygan in response to a question about where he would spend the night, the purpose of the investigation changed. Trooper Varoni's subsequent questions, having nothing to do with the scope of the traffic stop, changed the fundamental nature of the stop. What began as a routine traffic stop became an allencompassing criminal investigation. Trooper Varoni admitted it:

Q. Your purpose of the initial stop had seized [sic]; you weren't investigating speeding violation [sic] anymore were you?

A. No, no I wasn't.

Reasonable Suspicion of Criminal Activity

Even if Trooper Varoni's questions had been appropriate for a traffic stop, a second pertinent concern for the Court is whether defendant's answer provided a reasonable suspicion that criminal activity was occurring.

Trooper Varoni essentially admitted that he continued questioning the occupants of the vehicle on the basis of a hunch that something "wasn't quite right."

Q. [*Mr. Kwiatkowsi*]: Is it possible that he was in error as to where the Holiday Inn was?

A. [*Trooper Varoni*]: That's possible, yes.

Q. And the fact that someone misstates where they're staying um, you're saying that made you suspicious of him, is that right?

A. Uh, you—you can call it what you want, I don't know about suspicious but, yeah, it made me think twice about the statements he made.

Q. All right, so you weren't suspicious?

A. Yeah, I-I questioned his statements.

Q. Well, now when you're talking about suspicion you understand suspicious of something, right? Of some activity that's unlawful, right?

A. Yes, that could be.

Q. Well, what was it about that response that you were suspicious of that was unlawful?

A. I wasn't suspicious of any particular thing that was unlawful.

Q. So it was unparticularized suspicion is that what you're saying?

A. Um, I guess that could be.

Q. Okay. Because you couldn't put your finger on what it was you were suspicious of, right?

A. I was suspicious that something wasn't quite right.

Q. But you didn't know what it was, right?

A. That's right.

The trooper's intuition that "something wasn't quite right" and his observation that no luggage was visible in the passenger compartment were the things that made him suspicious. The trooper admitted that it is not uncommon for people to carry luggage out of sight in the trunk. Therefore, the only valid reason for the trooper to be suspicious was defendant's statement that he was staying at a Holiday Inn in Cheboygan.

The fact that defendant answered with the name of a hotel chain that did not have a facility in Cheboygan hardly created a reasonable suspicion that criminal activity was afoot.[2] The next question of defendant, once he had stepped out of the vehicle, was whether he had any prior conviction for

drugs. It was likewise unrelated to the traffic stop. This question is a further indicator that the trooper was acting on a mere hunch.

---

[2] It is noteworthy that the explanations Mr. Williams and his two passengers gave are not as inconsistent as the prosecution would have the Court believe. Mr. Williams indicated that they were going to Cheboygan to visit friends and would be there "about two days." They would be staying at a Holiday Inn. His companion, Mr. King, indicated that he was not sure how long they were going to be gone. This is not inconsistent with defendant's statement.

Mrs. Williams indicated that they were planning to do some shopping in Cheboygan. She was not sure where they were staying; they did not have reservations. This is also not inconsistent with Mr. Williams's explanation.

Where there is no articulable basis to suspect that a crime is being committed, the officer's questions amount to nothing more than a fishing expedition. The questioning and the subsequent search in this case went beyond the scope of the traffic stop and were unsupported by any reasonable articulable suspicion.

I agree with the Court of Appeals that, given the totality of the circumstances, the trooper had insufficient grounds for pursuing an investigatory stop and conducted his investigation based merely on a hunch. *People v Champion*, 452 Mich 92, 98; 549 NW2d 849 (1996). I would affirm the decision of the Court of Appeals.

Marilyn Kelly

OCT 19 2005

No. 05-197

In the
Supreme Court of the United States

JOHN LAVELL WILLIAMS,

Petitioner,

v

STATE OF MICHIGAN

Respondent.

Petition for a Writ of Certiorari to the Michigan Supreme Court

BRIEF FOR RESPONDENT IN OPPOSITION

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QUESTION PRESENTED

I. **The constitutional test for examining the conduct of a police officer during a traffic stop is reasonableness. Here, the traffic officer stopped petitioner for speeding and, after receiving a strange answer about petitioner's destination, asked him to step out of the car. The officer then asked follow-up questions, which the Michigan Supreme Court found were related to the original purpose of the traffic stop, and finished by asking for consent to search the car, which petitioner gave. The interchange lasted less than 10 minutes and the officer had not yet given petitioner a citation for speeding. Did the officer violate petitioner's Fourth Amendment rights?**

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ARGUMENT 8

I. The Michigan Supreme Court properly concluded that the trooper acted reasonably in asking these follow up questions where it found they were related to the original purpose of the traffic stop. This Court need not reach the issue that divides the Circuit Courts of Appeal. 8

1. The Michigan Supreme Court properly concluded that the trooper's questions here were reasonably related to the original purpose of the traffic stop. There was no constitutional violation. 10

2. Because an officer can ask for consent at any time during a traffic stop, there was no causal nexus between the alleged prolonged detention and the granting of consent, or, for that matter, the obtaining of the search warrant to search the trunk. 15

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OPINIONS AND ORDERS OF THE COURTS BELOW

The opinion and orders of the Courts that have been attached to the petition are:

- *People v Williams*, 472 Mich 308; 696 NW2d 636 (2005) (opinion reversing the Court of Appeals decision and reinstating petitioner's conviction).

- *People v Williams*, unpublished, per curiam opinion of the Michigan Court of Appeals, decided August 5, 2004 (Docket No. 249853).

JURISDICTION

The jurisdiction of this Court is invoked under 28 USC § 1257.

STATEMENT OF THE CASE

Petitioner's statement of the case provided an accurate description of the circumstances in this case, but there are additional facts that this Court should consider in examining the questions presented.[1]

On May 14, 2003, petitioner was convicted of possession with intent to deliver more than 50 grams of cocaine in violation of MCL 333.7401(2)(a)(iii) and of possession with intent to deliver marijuana in violation of MCL 333.7401(2)(d)(iii) following a one-day bench trial. Petitioner was sentenced to serve 7-to-20 years for the cocaine conviction and 2-to-4 years on the marijuana conviction, the sentences to run consecutive to each other.

In an unpublished, per curiam opinion, the Michigan Court of Appeals reversed this conviction after concluding that the drugs had been seized in violation of petitioner's Fourth Amendment rights.[2] The Michigan Supreme Court reversed this decision and reinstated petitioner's conviction.[3]

Petitioner was arrested for these drug offenses on February 14, 2003 after 54.4 grams of cocaine and 433.7 grams of marijuana were found in the trunk of petitioner's car. The issues of the case arise from the circumstances of the search that was conducted of petitioner's trunk.

1. The traffic stop.

On February 14, 2003, Trooper Varoni was working traffic duty on northbound highway in a northern Michigan county, Cheboygan County. Using his stationary radar,

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[1] See Supreme Court Rule 14(g).

[2] *People v Williams*, unpublished, per curiam opinion of the Michigan Court of Appeals, decided August 5, 2004 (Docket No. 249853).

[3] *People v Williams*, 472 Mich 308; 696 NW2d 636 (2005).

Trooper Varoni clocked petitioner traveling 88 mph in a 70 mph zone and effected a traffic stop at about 4:15 pm. There were two other occupants in petitioner's car: Keithen King was the front seat passenger and petitioner's wife, Sherrie Williams, was in the rear of the car. Trooper Varoni spoke to petitioner, who was driving, informed him that he had been speeding, and obtained his license. He also obtained petitioner's registration and proof of insurance.

The trooper asked petitioner where he was going and petitioner told him that "he was going into Cheboygan to visit friends and that he was staying at the Holiday Inn" there even though there is no Holiday Inn in Cheboygan. After noticing that petitioner had no luggage or other bags in the passenger compartment, Trooper Varoni asked him to step from the car.

In response to questions out of the car, petitioner told the trooper that he was planning on staying in Cheboygan for two days and that he was coming from Detroit. Regarding the lack of luggage, petitioner told him that "he didn't have anything other than the clothes he was wearing." In response to whether he had been in "trouble" before, petitioner admitted that he had been arrested for marijuana activity in the past.

Afterward, Trooper Varoni asked petitioner to return to the car and then asked the front seat passenger, Keithen King, to exit the car. He asked King about where they were going and how long they were staying. King said "he didn't know where he was going and didn't know how long he was going to be gone." King also told the trooper that he had not brought any clothing with him. The trooper then asked King to return to the car.

The trooper then spoke with Sherrie Williams through the back window of the car. Mrs. Williams told the trooper that they were traveling to Cheboygan to shop and that they did not have any reservations to stay anywhere. The trooper

estimated that the conversation with petitioner and the other two occupants lasted between five and eight minutes.

2. Petitioner gives consent to search the car.

At this point, the trooper again asked petitioner to step out of the vehicle, advising him of the "different stories between the three of them" and asked him "if he would consent to a search of the car." Petitioner consented to the search.

The trooper then called the canine unit to come and assist in the consent search. Officer Gordon Temple and his dog arrived at the scene within three minutes. During the search by the dog, it indicated positively on the rear seats of the car. The canine's search took about five to ten minutes. The trooper and Officer Temple searched the backseat for drugs but found nothing.

3. Petitioner refuses to give consent to search the trunk.

Consequently, Trooper Varoni then asked petitioner for consent to search the trunk. Petitioner told the officers that he did not have a key to the trunk. Trooper Varoni offered to have a locksmith come and petitioner initially gave consent, but then he retracted it, and said "he wanted to talk to his wife to make sure it was a mutual decision between the two of them."

Trooper Varoni then began the process to obtain a search warrant. The locksmith arrived on the scene and waited until the search warrant arrived. The search warrant arrived almost three hours later at approximately 7:30 pm, and then, pursuant to the search warrant, the locksmith opened the trunk where the cocaine and marijuana were found. Petitioner was then arrested.

4. Petitioner counsel's cross examination of the trooper.

On cross-examination, defense counsel examined the basis for the trooper's questioning of petitioner. Trooper Varoni explained to counsel that he asked "everybody I stop where they're going and where they're coming from." Trooper Varoni also explained that he thought it was "suspicious" that petitioner said he was staying at the Holiday Inn in Cheboygan when there was none there. After being confronted with the fact that there was a Holiday Inn in nearby Mackinac City, the trooper explained that petitioner's answers may not have been suspicious ("I don't know about suspicious") but "it made me think twice about the statements he made."

Defense counsel also elicited from the trooper that his suspicion was "unparticularized." The trooper further stated that at the point that he directed petitioner to step from the vehicle, he was not investigating the speeding violation. The occupants were not free to leave during the detention but were also not under arrest – the trooper was detaining them until he "could make a determination what I was going to do."

5. Petitioner is arrested.

After the search of the trunk had disclosed the cocaine and marijuana, the trooper gave petitioner a citation for speeding, traveling 88 mph in a 70 mph zone, and also cited him for the two felonies, possession with intent to deliver cocaine and marijuana.

6. The Michigan courts.

In circuit court, petitioner brought a motion to suppress the evidence. The trial court relied on the preliminary examination transcript of Trooper Varoni's testimony to reach a decision. On April 29, 2003, the trial court issued a decision

denying the motion to suppress. Petitioner was convicted at a bench trial.

Petitioner then appealed this conviction to the Michigan Court of Appeals. In response to petitioner's arguments on appeal, respondent argued, among other claims, that the follow-up questions the trooper asked were related to the original purpose for the traffic stop. In an unpublished, per curiam opinion on August 5, 2004, the Court of Appeals rejected this claim and reversed petitioner's conviction concluding that there was no particularized suspicion for the "second" investigative detention[4]:

> A review of the record reveals that the trooper commenced an investigatory stop when he asked defendant to step out of his vehicle so that the trooper could question defendant about whether defendant "had bags in his truck or where they were at," whether "he had been in trouble before," and whether "he'd been arrested for anything to do with drugs." These questions had no relevance to the traffic stop and were asked in order to determine whether petitioner was involved in criminal activity.

Respondent then appealed this decision to the Michigan Supreme Court. This Court reversed the Court of Appeals decision and reinstated the conviction because the trooper's conduct was reasonable[5]:

> The detention and search here were reasonable because: (1) the initial traffic stop was lawful, (2) *Trooper Varoni's questions about defendant's travel plans, and his limited follow-up, were reasonable and did not exceed the*

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[4] Petitioner's Appendix, *Williams*, p 13.
[5] *Williams*, 472 Mich at 318 (emphasis added).

proper scope and duration of the initial traffic stop, and (3) after Trooper Varoni concluded his questioning, defendant voluntarily consented to the search of the vehicle.

Petitioner now brings this petition for writ of certiorari.

SUMMARY OF ARGUMENT

Petitioner asks this Court to grant his petition for writ of certiorari, claiming that this case will enable this Court to address the split of authority in the federal Circuit Courts of Appeal on the issue whether an officer may prolong a traffic stop on a basis unrelated to the stop without particularized suspicion for doing so. This case does not require the resolution of the issue.

Although there may be a split of authority on that issue, there is agreement among the Circuit Courts of Appeal that a trooper may ask questions that are related to the reason for the initial stop. Here, in reinstating petitioner's conviction, the Michigan Supreme Court held that the trooper's follow-up questions, including those about petitioner's destination, his luggage, and whether he had been in trouble before, "did not exceed the proper scope" of the initial traffic stop. On this basis, the Court found that the trooper's conduct was reasonable. Consequently, the Court did not reach the question about whether the trooper could have prolonged the detention for reasons unrelated to the purpose of the traffic stop.

Moreover, there is a second, independent basis on which to uphold the search that the Michigan Court of Appeals did not address, although briefed, and that the Michigan Supreme Court did not reach. There was no causal nexus between the claim of a prolonged, unlawful detention and the consent that petitioner gave for the search of the vehicle, which then led to the search warrant executed on the trunk. For this additional reason, the evidence seized was admissible.

As a result, this case does not provide a test case to examine the split of authority that petitioner has identified because the Michigan Supreme Court did not reach this issue in adjudicating the case.

ARGUMENT

I. The Michigan Supreme Court properly concluded that the trooper acted reasonably in asking these follow up questions where it found they were related to the original purpose of the traffic stop. This Court need not reach the issue that divides the Circuit Courts of Appeal.

The Fourth Amendment provides that a person has a right to be free from unreasonable searches and seizures.[6] Under Michigan law, the police may make a traffic stop on a person based on probable cause where an officer observes a traffic violation.[7] For the purposes of the Fourth Amendment, a traffic stop is a seizure.[8] Moreover, a traffic stop is more analogous to an investigative detention than a custodial arrest and, therefore, may be analyzed under the standard articulated in *Terry v Ohio*.[9]

Under *Terry*, there is a two-pronged test to determine whether an action comports with the Fourth Amendment: First, the officer's action must be justified at its inception. Second, the action must be reasonably related in scope to the circumstances which justified the interference in the first place.[10]

More recently, in *Ohio v Robinette*,[11] this Court evaluated a case under factual circumstances similar to this one. In *Robinette*, this Court examined a traffic stop conducted

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[6] See *Mapp v Ohio*, 367 US 643, 655; 81 SCt 1684; 6 LEd2d 1081 (1961).
[7] See *People v Kazmierczak*, 461 Mich 411, 421, n 8; 605 NW2d 667 (2000).
[8] *Delaware v Prouse*, 440 US 648, 653; 99 SCt 1391; 59 LEd2d 660 (1979).
[9] *Terry v Ohio*, 392 US 1; 88 SCt 1868; 20 LEd2d 889 (1968). See *Berkemer v McCarty*, 468 US 420, 439; 104 SCt 3138; 82 LEd2d 317 (1984).
[10] *Terry*, 392 US at 20.
[11] *Ohio v Robinette*, 519 US 33; 117 SCt 417; 136 LEd2d 347 (1996).

by an Ohio police officer in which the officer stopped the defendant for speeding. Based on the stop, the officer obtained the defendant's license and ran a computer check on it, which indicated that the defendant had no prior violations. The officer then asked the defendant to step out of the car, turned on his mounted video camera, gave him a verbal warning, and returned him his license. At this point, the officer asked the defendant "before you get gone: Are you carrying any illegal contraband in your car?" The defendant answered no and then the officer asked for consent to search the car and obtained it. Consistent with the consent search, the officer found a small amount of marijuana in the car.[12]

In finding that the consent search was illegal, the Ohio Supreme Court had found that the traffic detention had been prolonged without any particularized suspicion[13]:

> When the motivation behind a police officer's continued detention of a person stopped for a traffic violation is not related to the purpose of the original, constitutional stop, and when that continued detention is not based on any articulable facts giving rise to a suspicion of some separate illegal activity justifying an extension of the detention, the continued detention constitutes an illegal seizure.

The Ohio Supreme Court then concluded that because the officer had determined that he was not going to give the defendant a ticket at the time that he asked him to get out of the car that the detention became unlawful.[14]

This Court rejected this analysis, noting that the subjective intentions of the officer were irrelevant because the

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[12] *Robinette*, 519 US at 36.
[13] *Robinette*, 519 US at 37-38.
[14] *Robinette*, 519 US at 38.

test for a seizure's constitutionality was whether the circumstances, viewed objectively, justified the action.[15] This Court noted that consistent with the probable cause to stop the defendant for speeding, the officer was justified in asking the defendant to step from the vehicle.[16]

This Court then examined the primary holding of the Ohio Supreme Court – that is, that the police must specifically inform a person that the person is free to leave after a valid traffic stop before attempting to engage in consensual interrogation.[17] In rejecting this bright line rule, this Court stated that the "touchstone" of the Fourth Amendment's analysis is reasonableness, and that reasonableness is measured by examining the totality of the circumstances.[18] The question whether the defendant understood that he had a right to refuse to give consent to the search was merely one factor to consider within the totality of the circumstances.

1. The Michigan Supreme Court properly concluded that the trooper's questions here were reasonably related to the original purpose of the traffic stop. There was no constitutional violation.

The federal appellate courts are agreed in recognizing the authority of a police officer to ask questions related to the

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[15] *Robinette*, 519 US at 38, citing *Whren v United States*, 517 US 806, 813; 116 SCt 1769; 135 LEd2d 89 (1996).

[16] *Robinette*, 519 US at 38-39, citing *Pennsylvania v Mimms*, 434 US 106; 98 SCt 330; 54 LEd2d 331 (1977) ("We hold . . . that once a motor vehicle has been lawfully detained for a traffic violation, the police officers may order the driver to get out of the vehicle without violating the Fourth Amendment's proscription of unreasonable searches and seizures").

[17] *Robinette*, 519 US at 36.

[18] *Robinette*, 519 US at 39.

driver's travel plans during a traffic stop.[19] Indeed, the Eighth Circuit Court of Appeals in *United States v $404,905.00 in U.S. Currency*[20] recognized that the question whether the police might search the vehicle is one that is related to the original purpose of the stop:

> [H]aving made a valid traffic stop, the police officer may detain the offending motorist while the officer completes a number of routine but somewhat time-consuming tasks related to the traffic violation, such as computerized checks of the vehicle's registration and the driver's license and criminal history, and the writing up of a citation or warning. *During this process, the officer may ask the motorist routine questions such as his destination, the purpose of the trip, or whether the officer may search the vehicle,* and he may act on whatever information is volunteered. [Emphasis added.]

In other words, the federal appellate courts that require that questions be related to the original basis for the traffic stop hold that a police officer, during the traffic stop, might ask questions about the driver's travel plans, destination, and purpose for the trip and even ask for consent to search.

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[19] See *United States v Hill*, 195 F3d 258, 268 (CA 6, 1999) ("[The traffic officer's] questioning of [the driver] as to his moving plans at the outset of the stop was reasonable in that the questions related to [the driver's] purpose for traveling"); *United States v Ramos*, 42 F3d 1160, 1163 (CA 8, 1994) ("A reasonable investigation of a traffic stop include asking for the driver's license and registration, requesting the driver to sit in the patrol car, and asking the driver about his destination and purpose"); and *United States v Williams*, 271 F3d 1262 (CA 10, 2001) ("When directly confronted with the issue, we have repeatedly held (as have other circuits) that questions relating to a driver's travel plans ordinarily fall within the scope of a traffic stop").

[20] *United States v $404,905.00 in U.S. Currency*, 182 F3d 643, 647 (CA 8, 1999).

This was the situation here. The trooper asked petitioner where he was going and petitioner answered that he was visiting friends and staying at the Holiday Inn in Cheboygan. The question was entirely appropriate. Based on petitioner's strange answer and on the fact that petitioner had no luggage, the trooper asked him to step from the vehicle. Under *Robinette*, the trooper was justified in asking him to step from the vehicle based on the traffic stop alone.[21]

At this point, in response to the trooper's questions, petitioner explained that he had come from Detroit and was staying for two days with friends but he had brought no clothing. This is a second strange answer – the claim that petitioner was going to stay somewhere for two days but did not bring a change of clothing is implausible. Consequently, the trooper then asked follow-up questions to the ones he had asked about defendant's travel plans. The Eighth Circuit in *United States v Ramos*[22] has recognized that where a person gives "inconsistent" answers to a police officers routine questions, this may give rise to suspicion that would justify further probing questions:

> If reasonably related questions raise inconsistent answers, or if the licenses and registration do not check out, a trooper's suspicions may be raised so as to enable him to expand the scope of the stop and ask additional, more intrusive, questions.

In this way, the court recognized that a police officer might reasonably ask questions that relate to the inconsistencies in the driver's answers. This is a common sense principle.

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[21] See *Robinette*, 519 US at 38-39.

[22] *United States v Ramos*, 42 F3d 1160, 1163 (CA 8, 1994).

In this case, the Michigan Supreme Court reached the same conclusion on these facts. The Court recognized the general federal constitutional test that a police officer may "ask reasonable questions in order to obtain additional information about the underlying offense and the circumstances leading to its commission."[23] The touchstone of the Fourth Amendment is reasonableness.[24]

The Michigan Court then concluded that the reasonable standard from *Robinette* had been met[25]:

> That standard was satisfied here. Trooper Varoni introduced himself to defendant, explained the purpose of the stop, and obtained the necessary identification and paperwork in order to complete the citation for the civil infraction of speeding. In response to a routine question about his travel plans, defendant provided Trooper Varoni with an explanation that was implausible. Therefore, *even before Trooper Varoni could resolve the matter of defendant's violation of the traffic laws*, he was presented with additional suspicious circumstances that warranted further investigation. [Emphasis added.]

The finding that the purpose of the original traffic stop was not completed is supported by the record. Despite the trooper's answers that suggested that the speeding matter was completed at the time that he received petitioner's license, proof of insurance, and registration, Trooper Varoni's

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[23] *Williams*, 472 Mich at 316, citing, among other cases, *Hill*, 195 F3d at 168; and *Williams*, 271 F3d 1267.

[24] *Robinette*, 519 US at 39.

[25] *Williams*, 472 Mich at 317 (footnote omitted).

subjective statements are not controlling.[26] The purpose for the stop was objectively not over. Trooper Varoni had not given the petitioner a citation or even made a determination whether he was going to give him one.

In fact, the record makes clear that the trooper had not even returned to his vehicle to verify petitioner's driving record on the law enforcement information network (LEIN) to determine whether to give him a citation for 18 mph over the speed limit, or 15 over, or 10 over, or even a warning. Rather, the trooper's candid assessment was that he was detaining them until he could make "a determination what [he] was going to do."

Moreover, the Michigan Court's findings that the trooper asked reasonable follow-up questions and responded to additional suspicious circumstances are also supported by the record. After asking petitioner whether he had been in trouble and whether he had been arrested, the trooper then asked the other occupants questions about their travel plans to see if their stories matched. These were follow-up questions to petitioner's original dishonest, evasive answers.

Once Trooper Varoni received further inconsistent answers about their plans – Keithen King did not know their plans and Sherrie Williams said they were only shopping – Trooper Varoni then returned to petitioner, confronted him with these inconsistencies, and asked him for consent to search the car. Petitioner then voluntarily gave his consent. The entire episode lasted less than 10 minutes. Trooper Varoni then finally issued petitioner a citation after the search – he wrote him up for 88 mph in the 70 mph zone and for the two felonies. The citation form itself includes a felony as a type of possible offenses.

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[26] See *Robinette*, 519 US at 38 ("Deputy Newsome was objectively justified in asking Robinette to get out of the car, subjective thoughts notwithstanding").

The Michigan Supreme Court rightly found that the follow-up questions were reasonably related to the original purpose of the traffic stop. There is no reason for this Court to revisit the State court's findings.[27] This Court should deny petitioner's request for a writ.

2. Because an officer can ask for consent at any time during a traffic stop, there was no causal nexus between the alleged prolonged detention and the granting of consent, or, for that matter, the obtaining of the search warrant to search the trunk.

Because there was no causal nexus between petitioner's grant of consent to search the car and the allegedly unreasonable detention, any claim that the investigative detention was improper is irrelevant. Respondent raised this argument in its brief in the Michigan Court of Appeals, but that court elected not to address the argument in its written opinion. The Michigan Supreme Court did not need to reach this issue.

Under federal law, there must be a relationship between the violation of the Fourth Amendment and the seizure of the evidence to warrant the sanction of suppression.[28]

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[27] See *Hernandez v New York*, 500 US 352, 366; 111 SCt 1859; 114 LEd2d 395 (1991) ("The reasons justifying a deferential standard of review in other contexts, however, apply with equal force to our review of a state trial court's findings of fact made in connection with a federal constitutional claim. Our cases have indicated that, in the absence of exceptional circumstances, we would defer to state-court factual findings, even when those findings relate to a constitutional issue").

[28] See *Brown v Illinois*, 422 US 590, 603; 45 LEd2d 416; 95 SCt 2254 (1975) (examining the causal connection between an illegal detention and the admissibility of a defendant's subsequent statement). See also *Wong Sun v United States*, 371 US 471; 83 SCt 407; 9 LEd2d 441 (1963).

Here, there was no dispute that the original traffic stop was proper. Also, there is no requirement for the police to have any suspicion at all to ask for consent to search. If the questions regarding petitioner's prior trouble with the police were somehow improper, they only served to prolong the detention by a few minutes. Petitioner does not dispute the point that he gave consent here. Rather, he claimed that this consent was the product of the illegal detention

But petitioner later effectively refused consent when Trooper Varoni asked to search the trunk after the dog indicated positive for drugs in the car but the search of the interior revealed no drugs, which undermines his claim that he only gave consent to the search of the interior because of the detention. The fact of the later refusal illustrates that there was no nexus between the detention and the consent, because if a short detention caused petitioner to accede to a search, the search of the interior would have only further pressured him to give consent for the trunk. Instead, petitioner's counsel admitted in argument at the evidentiary hearing that the real reason he gave consent was that he did not anticipate that he would have to wait while the police would obtain a canine for the search.

The federal courts have recognized that the causal chain of evidence obtained during a valid traffic stop that exceeds its proper scope may be broken by a valid consent to search.[29] The Eighth Circuit in *Ramos* noted that the arrest and consent were close in time, and although there were no intervening circumstances, the officer's conduct was in good faith and the violation was not flagrant. The same is true here. The Court there then concluded that the Fourth Amendment did not require suppression[30]:

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[29] See *Ramos*, 42 F3d at 1164.
[30] *Ramos*, 42 F3d at 1164.

> [W]e hold that [defendant's] voluntarily signing the consent form was sufficiently an act of free will to purge the taint of the preceding illegal detention. Therefore, the evidence discovered by the consented-to search was not made inadmissible by the Fourth Amendment.

Likewise, here, there was no causal relationship between the additional questions asked of petitioner and petitioner's granting of consent. If so, he would also have consented to search the trunk and alleviated the police's need to obtain a search warrant.

There is no reason for this Court to reach the issue about whether a police officer may ask questions unrelated to the original purpose of the stop without particularized suspicion. There are two other bases on which to affirm. This Court should deny the petitioner's request for a writ.

RELIEF

The Petition for a writ of certiorari should be denied.

Respectfully submitted,

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